

July 31, 2003 version

**PROPOSED RULE FOR IMPLEMENTATION OF THE 8-HOUR OZONE NAAQS
DRAFT REGULATORY TEXT**

INTRODUCTION

The attached draft regulatory text for the 8-hour ozone implementation proposed rule is intended to accompany the June 2, 2003, proposed rule to implement the 8-hour ozone NAAQS. The draft regulatory text contains most of the major elements of the implementation approach, e.g., the transition from the 1-hour to the 8-hour ozone NAAQS and how to implement the CAA's provisions related to anti-backsliding.

The June 2, 2003 proposal contains the background discussion for the regulatory text proposed below. The June 2 proposal set forth for comment several options for certain features or plan elements; the draft regulatory text below provides the regulatory text for only one of the options being proposed for each feature or element to demonstrate how the regulatory text would appear for that set of options. Selection of a particular option was generally based on the preferences stated in the June 2, 2003 proposal; however, this selection should not be interpreted as a decision by EPA to proceed with that option in final rulemaking, since comments are still being received on the June 2 proposal.

The draft would also amend 40 CFR Part 81 by adding and reserving a new subpart E, which would be used to identify the area designations and classifications for the 1-hour standard in place at the time the 1-hour standard no longer applies to each area; this is being done to implement the proposed rule on anti-backsliding.

In this draft regulatory text, we are not yet addressing the options concerning new source review, i.e., the transitional program and the Clean Air Development Communities program.

The attached regulatory text does not contain any language implementing the new source review transitional option. Although EPA has proposed a transitional option, we are still developing the best method to implement it. At this time, we are considering three options, as follows:

Option 1: Revise the Offset Interpretative Ruling (40 CFR Part 51, appendix S) by either

- (1) modifying section VI of this appendix or
- (2) including the appropriate language in a major rewrite of this appendix.

Although the former approach would minimize EPA efforts, the later may be necessary because we did not amend Appendix S in the December 31, 2002 NSR reform rulemaking. Appendix S would instruct a State how to permit new major sources and modifications in nonattainment areas where a State does not have its own permitting program.

Option 2: Promulgate a new federal Part D regulatory program for major new and modified sources in 40 CFR Part 52.10. This rule would function as a federal rule similar to the current 40 CFR 52.21 regulations function for the Prevention of Significant Deterioration (PSD) program. EPA would be responsible for permitting the applicable sources unless a States took delegation of the program. This rule could also be used for areas that fail to amend their existing nonattainment NSR rules to conform to the December 31, 2002 NSR rulemaking.

Option 3: Use the PSD federal program by revising 40 CFR part 52.21 so that it applies in newly designated nonattainment areas. EPA would be responsible for the permitting unless a State took delegation of the program.

EPA is deciding among these options. Once EPA decides among the various options we will provide regulatory language and, if necessary, a supplemental proposal.

For the Clean Air Development Communities program, EPA wants to review comments on the June 2 proposal before crafting a more specific supplemental proposal and regulatory text.

Attachment

**DRAFT REGULATORY TEXT TO ACCOMPANY
JUNE 2, 2003, PROPOSED RULEMAKING TO IMPLEMENT THE 8-HOUR OZONE
STANDARD (68 FR 32802)**

**40 CFR Part 50-National Primary and Secondary Ambient Air
Quality Standards**

The second sentence of 40 CFR 50.9(b) is proposed to be amended to read as follows:

Sec. 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(b) . . . The 1-hour NAAQS set forth in section 50.9(a) will no longer apply to an area one year after the effective date of the designation of that area for the 8-hour ozone NAAQS pursuant to section 107 of the Clean Air Act.

40 CFR Part 51-Requirements for Preparation, Adoption, and Submittal of Implementation Plans

40 CFR 51 is proposed to be amended by adding a new subpart X to read as follows:

Subpart X-Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard.

Sec. 51.900 Definitions.

Sec. 51.901 Applicability of Part 51.

Sec. 51.902 Which nonattainment area planning provisions of the Act shall apply to areas designated nonattainment for the 8-hour NAAQS?

Sec. 51.903 How do the classification and attainment date provisions in section 181 of subpart 2 of the Act apply to areas subject to section 51.902(a)?

Sec. 51.904 How do the classification and attainment date

provisions in section 172(a) of subpart 1 of the Act apply to areas subject to section 51.902(b)?

Sec. 51.905 Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding.

Sec. 51.906 Redesignation to nonattainment following initial designations for the 8-hour NAAQS.

Sec. 51.907 For an area that fails to attain the 8-hour NAAQS by its attainment date, how does EPA interpret sections 172(a)(2)(C)(ii) and 181(a)(5)(B) of the Act?

Sec. 51.908 What modeling and attainment demonstration requirements apply for purposes of the 8-hour ozone NAAQS?

Sec. 51.909 Baseline emission inventories for attainment demonstrations and RFP Plans

Sec. 51.910 What requirements for reasonable further progress (RFP) under sections 172(c)(1) and 182 apply for areas designated nonattainment for the 8-hour ozone NAAQS?

Sec. 51.911 [Reserved]

Sec. 51.912 What requirements apply for reasonably available control technology (RACT) under the 8-hour NAAQS?

Sec. 51.913 Which nonattainment areas are subject to the section 182(f) NO_x waiver provisions for the 8-hour NAAQS?

Sec. 51.914 [Reserved] *[for NSR proposal]*

Sec. 51.915 What emission inventory requirements apply under the 8-hour NAAQS?

Sec. 51.916 What are the requirements for an Ozone Transport Region under the 8-hour NAAQS?

Sec. 51.900 Definitions.

The following definitions apply for purposes of this subpart.

Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) 1-hour NAAQS means the 1-hour ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) 8-hour NAAQS means the 8-hour ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) 1-hour ozone design value is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the

enactment of the Clean Air Act Amendments of 1990.

(d) 8-Hour ozone design value is the 8-hour ozone concentration calculated according to 40 CFR part 50, Appendix I.

(e) Act means the Clean Air Act as codified at 42 U.S.C. sections 7401 - 7671q. (2003).

(f) Applicable requirements means for an area the following requirements to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the Act for the 1-hour NAAQS:

- (1) Reasonably available control technology (RACT)
- (2) Inspection and maintenance programs (I/M)
- (3) Offset ratios for new source review (NSR)
- (4) Major source applicability cut-offs for purposes

of RACT and NSR

- (5) Rate of Progress (ROP) Plans.
- (6) Stage II vapor recovery
- (7) Clean fuels fleet program.
- (8) Reformulated gasoline as required under section 211(k)(1)(D) of the Act
- (9) Clean fuels for boilers
- (10) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the Act.

(g) Attainment year ozone season shall mean the ozone season immediately preceding a nonattainment area's

attainment date.

(h) Higher classification/lower classification. For purposes of determining whether a classification is higher or lower, classifications are ranked from lowest to highest as follows: classification under subpart 1 of the Act; marginal; moderate; serious; severe-15; severe-17; and extreme.

(i) Initially designated means the first designation that becomes effective for an area for the 8-hour ozone standard and does not include a redesignation to attainment or nonattainment.

(j) Maintenance area for the 1-hour NAAQS means an area that was designated nonattainment for the 1-hour ozone NAAQS and was redesignated to attainment for the 1-hour ozone NAAQS and is subject to a maintenance plan as required by section 175A of the Act.

(k) Nitrogen Oxides (NO_x) means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(l) NO_x SIP Call means the rules codified at 40 CFR 51.121 and 51.122.

(m) Ozone season means for each state, the ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 2.5 for that state.

(n) Ozone transport region means the area established by section 184(a) of the Act or any other area

established by the Administrator pursuant to section 176A of the Act for purposes of ozone.

(o) Reasonable further progress (RFP) means the progress reductions required under section 172(c)(1) and section 182(b)(1) and (c)(2)(B) of the Act for purposes of the 8-hour NAAQS.

(p) Rate of progress (ROP) means the progress reductions required under section 182(b)(1) and (c)(2)(B) of the Act for purposes of the 1-hour ozone NAAQS.

(q) Revocation of the 1-hour NAAQS means the time at which the 1-hour ozone national ambient air quality standards no longer apply to an area pursuant to 40 CFR 50.9(b).

(r) Subpart 1 means subpart 1 of part D of title I of the Act

(s) Subpart 2 means subpart 2 of part D of title I of the Act.

Sec. 51.901 Applicability of Part 51. The provisions in subpart(s) A-W of part 51 apply to areas for purposes of the 8-hour NAAQS to the extent they are not inconsistent with the provisions of this subpart.

Sec. 51.902 Which nonattainment area planning provisions of the Act shall apply to areas designated nonattainment for the 8-hour NAAQS?

(a) Classification under subpart 2. An area with a 1-hour ozone

design value equal to or greater than 0.121 ppm at the time it is designated or redesignated as nonattainment for the 8-hour NAAQS will be classified in accordance with section 181 of the Act, as interpreted in section 51.903(a) of this part, for purposes of the 8-hour NAAQS, and will be subject to the requirements of subpart 2 that apply for that classification.

(b) Classification under subpart 1. An area with a 1-hour design value less than 0.121 at the time it is designated or redesignated as nonattainment for the 8-hour NAAQS will be subject to the requirements of subpart 1.

(c) For purposes of calculating an area's 1-hour design value, consistent with Appendix H of 40 CFR part 50, EPA will rely on the three most recent years of air quality data at the time of designation or redesignation.

Sec. 51.903 How do the classification and attainment date provisions in section 181 of subpart 2 of the Act apply to areas subject to section 51.902(a)?

(a) In accordance with section 181(a)(1) of the Act, each area subject to section 51.902(a) shall be classified by operation of law at the time of designation. However, the classification shall be based on the 8-hour design value for the area, in accordance with Table 1 below. The 8-hour design value for the area shall be calculated using the three most recent years of air quality data, consistent with Appendix I of 40 CFR part 50 . For each area classified under this section, the primary standard attainment date for the 8-hour NAAQS shall be as expeditious as

practicable but not later than the date provided in Table 1, below.

TABLE 1			
CLASSIFICATION FOR			
8-HOUR OZONE NAAQS			
Area class		8-hour design value (ppm ozone)	Attainment Date (years after effective date of nonattainment designation for 8-hour NAAQS)
Marginal	from	0.085	3
	up to*	0.092	
Moderate	from	0.092	6
	up to*	0.107	
Serious	from	0.107	9
	up to*	0.120	
Severe-15	from	0.120	15
	up to*	0.127	
Severe-17	from	0.127	17
	up to*	0.187	
Extreme	equal to	0.187	20
	or above		
* but not including			

(b) Within 12 months after the effective date of the initial designation for the 8-hour NAAQS, a State may request a lower classification if it demonstrates the area will attain the standard by the earlier attainment date of a lower classification in Table 1. Such demonstration must be consistent with EPA's modeling guidance in Appendix W of this part and EPA's most

recent modeling guidance at the time the modeled attainment demonstration is performed. Such SIP must also contain any additional local emission control measures and any additional requirements of the new classification. If within 24 months after the effective date of designation EPA approves that demonstration, then EPA will reclassify the area to the lower classification and approve that earlier attainment date for the area. In reclassifying an area under this paragraph, the Administrator will take into account the extent to which the area significantly contributes to nonattainment or interferes with maintenance in a downwind area.

Sec. 51.904 How do the classification and attainment date provisions in section 172(a) of subpart 1 of the Act apply to areas subject to section 51.902(b)?

(a) Classification. An area subject to section 51.902(b) will not be classified, except the Administrator may classify such an area as an overwhelming transport area if the area meets the criteria as specified for rural transport areas under section 182(h) of the Act. A nonattainment area classified as an overwhelming transport area must meet the emission control and planning requirements of areas classified as marginal.

(b) Attainment Dates.

(1) For an area subject to section 51.902(b), the Administrator will approve an attainment date consistent with the attainment date timing provision of section 172(a)(2)(A) at the time the Administrator approves an

attainment demonstration for the area.

(2) Areas that are subject to section 51.902(b) of this part with a requested attainment date of 3 years or less after the designation date. For an area subject to section 51.902(b) of this part that requests an attainment date of no later than 3 years following designation for the 8-hour NAAQS, the State must submit within 1 year after the effective date of the designation a SIP that demonstrates the area will attain within 3 years following designation. The demonstration must include modeling results and analyses that the State is relying on to support its claim. Such modeling must be consistent with EPA guidance and must be appropriate for the area.

Sec. 51.905 Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding.

a. What requirements that applied in an area for the 1-hour NAAQS continue to apply after revocation of the 1-hour NAAQS for that area?

(1) 8-Hour NAAQS Nonattainment/1-Hour NAAQS Nonattainment

An area designated nonattainment for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS for that area:

(i) Remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f) to the extent that the area had a higher classification for the 1-hour NAAQS than it has

for the 8-hour NAAQS, except as provided in paragraph (a) (1) (iii) of this section, and except as provided in paragraph (b) of this section. If the area has a classification for the 8-hour NAAQS that is the same as or higher than it had for the 1-hour standard, it must meet the requirements for the 8-hour classification.

(ii) Must have a SIP that the State submits within 1 year after the effective date of the area's designation for the 8-hour NAAQS that provides for a 10 percent emission reduction. Such SIP must achieve a 10 percent reduction in emissions of VOC and/or NO_x from the baseline emission inventory by May 1, 2007, if the area has not met its obligation to have a fully-approved attainment demonstration SIP for the 1-hour NAAQS. The emission reductions for achieving the 10 percent reduction must be in addition to those already adopted and required by existing federal, state or local requirements.

(iii) Is not subject to submission by the State of a SIP providing for ROP for the 1-hour NAAQS for any period for which such area is subject to RFP for the 8-hour NAAQS under section 51.910. The State may only modify ROP measures approved into the SIP for the 1-hour NAAQS provided they demonstrate that the modification ensures equivalent or greater emission reductions.

(2) 8-Hour NAAQS Nonattainment/1-Hour NAAQS Maintenance Area

An area designated nonattainment for the 8-hour NAAQS that is a maintenance area for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS for that area remains subject to the obligation to implement the applicable requirements as defined in section 51.900 (f) to the extent such obligations are required by the approved 1-hour NAAQS SIP, except as provided in paragraph (b) of this section. If, prior to revocation of the 1-hour NAAQS for the area, EPA approved a SIP revision for the 1-hour SIP shifting that obligation to a contingency measure, the area is not required to implement that measure as part of its 8-hour SIP, except to the extent required under its 8-hour classification; however the State may not remove such measure from the SIP.

(3) 8-Hour Attainment or Unclassifiable/1-Hour Nonattainment

(i) Obligations in an approved SIP. An area designated attainment or unclassifiable for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS for that area must continue to implement the applicable requirements as defined in section 51.900(f) to the extent such requirements were approved into the SIP, except as provided in paragraph (b) of this section.

(ii) Attainment demonstration and ROP plans.

(A) To the extent an area designated attainment or

unclassifiable for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS does not have an approved attainment demonstration or ROP plan that was required for the 1-hour NAAQS under the Act, the obligation to submit such an attainment demonstration or ROP plan

- (1) is deferred for so long as the area continues to maintain the 8-hour NAAQS; and
- (2) no longer applies once the area has an approved maintenance plan pursuant to paragraph (a)(3)(iii) of this section.

(B) If an area designated attainment or unclassifiable for the 8-hour NAAQS and designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS violates the 8-hour NAAQS, prior to having an approved maintenance plan for the 8-hour NAAQS as provided under paragraph (a)(3)(iii) of this section,

- (1) the area will be subject to the 10 percent emission reduction requirement of paragraph (a)(1)(ii) or this section, except the submission date shall be 1 year after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred; the SIP required under paragraph

(a) (1) (ii) of this section shall provide for achieving the 10 percent emission reductions within 3 years after the date on which EPA publishes a determination that a violation of the 8-hour NAAQS has occurred; and

(2) the State shall submit an ROP plan to achieve any outstanding ROP reductions that were required under the 1-hour NAAQS, and the three-year period or periods for achieving the ROP reductions will begin January 1 of the year following the three-year period on which EPA bases its determination that a violation of the 8-hour NAAQS occurred.

(iii) Maintenance Plans for the 8-hour NAAQS. For areas initially designated attainment for the 8-hour NAAQS, and designated nonattainment for the 1-hour NAAQS at the time of revocation of the 1-hour NAAQS, the State shall submit no later than 3 years after the effective date of the area's designation for the 8-hour NAAQS, a maintenance plan for the 8-hour NAAQS in accordance with section 110(a)(1) of the Act. The maintenance plan must provide for continued maintenance of the 8-hour NAAQS for 10 years following designation and must include contingency measures. This provision does not apply to areas redesignated from nonattainment to attainment for the 8-hour NAAQS. Such areas are

subject to the maintenance plan requirement in section 175A of the Act.

(b) Does attainment of the 1-hour standard affect the obligations under paragraph (a) of this section? A State remains subject to the obligations under paragraphs (a)(1)(i), (a)(2), and (a)(3)(i) of this section until the area attains the level of the 1-hour NAAQS. After the area attains the level of the 1-hour NAAQS, the State may request such obligations be shifted to contingency measures, consistent with section 110(1) of the Act; however, the State cannot remove the obligations from the SIP.

(c) Which portions of an area designated for the 8-hour NAAQS remain subject to the obligations identified in paragraph (a) of this section?

(i) Except as provided in paragraphs (c) (ii) and (iii) of this section, only the portion of the designated area for the 8-hour NAAQS that was required to adopt the applicable requirements in 51.900(f) for purposes of the 1-hour NAAQS is subject to the obligations identified in paragraph (a) of this section. 40 CFR Part 81, Subpart E identifies the area designations and classifications for the 1-hour NAAQS at the time the 1-hour NAAQS no longer applied to each area.

(ii) For purposes of paragraph (a)(1)(ii) of this section, the requirement to achieve a 10 percent reduction in baseline emissions applies to the entire area designated nonattainment for the 8-hour ozone

NAAQS.

(iii) For purposes of paragraph (a)(3)(iii) of this section, the maintenance plan must demonstrate maintenance for the entire area designated attainment for the 8-hour ozone NAAQS.

(d) What flexibility does a State have to modify control obligations approved into the SIP and not addressed in paragraph (a) of this section? A State may revise or remove requirements in the approved SIP (including commitments to take future action) consistent with sections 110(1) and 193 of the Clean Air Act if such requirement is not addressed for that area under paragraph (a) of this section.

(e) What obligations that applied for the 1-hour NAAQS will no longer apply after revocation of the 1-hour NAAQS for an area?

(1) Maintenance Plans. Upon revocation of the 1-hour NAAQS, an area with an approved 1-hour maintenance plan under section 175A of the Act may modify the maintenance plan: (a) to remove the obligation to submit a maintenance plan for the 1-hour NAAQS 8 years after approval of the initial 1-hour maintenance plan; and (b) to remove the obligation to implement contingency measures upon a violation of the 1-hour NAAQS. However, such requirements will remain enforceable as part of the approved 1-hour NAAQS SIP until such time as EPA approves a SIP revision removing such obligations. The EPA shall not approve a SIP revision requesting these modifications until the State submits and

EPA approves an attainment demonstration for the 8-hour NAAQS under section 51.908 for an area designated nonattainment for the 8-hour ozone NAAQS or a maintenance SIP under paragraph (a)(3)(iii) of this section for an area designated attainment for the 8-hour NAAQS.

(2) Findings of failure to attain the 1-hour NAAQS. Upon revocation of the 1-hour NAAQS for an area, EPA is no longer obligated -

(i) to determine pursuant to section 181(b)(2) or section 179(c) of the Act whether an area attained the 1-hour NAAQS by that area's attainment date for the 1-hour NAAQS; or

(ii) to reclassify an area to a higher classification for the 1-hour NAAQS based upon a determination that the area failed to attain the 1-hour NAAQS by the area's attainment date for the 1-hour NAAQS.

(3) Conformity determinations for the 1-hour NAAQS. Upon revocation of the 1-hour NAAQS for an area, conformity determinations pursuant to section 176(c) of the Act are no longer required for the 1-hour NAAQS. At that time, any provisions of applicable SIPs that require conformity determinations in such areas for the 1-hour NAAQS will no longer be enforceable pursuant to section 176(c)(5) of the Act.

(f) What is the continued applicability of the NO_x SIP Call after revocation of the 1-hour NAAQS? The NO_x SIP Call shall continue

to apply after revocation of the 1-hour NAAQS. Control obligations approved into the SIP pursuant to 40 CFR sections 51.121 and 51.122 may be modified by the State only if the requirements of sections 51.121 and 51.122, including the statewide NO_x emission budgets, continue to be met and the State makes a showing consistent with section 110(l).

Sec. 51.906 Redesignation to nonattainment following initial designations for the 8-hour NAAQS.

For any area that is initially designated attainment or unclassifiable for the 8-hour NAAQS and that is subsequently redesignated to nonattainment for the 8-hour ozone NAAQS, any absolute, fixed date applicable in connection with the requirements of this part is extended by a period of time equal to the length of time between the effective date of the initial designation for the 8-hour NAAQS and the effective date of redesignation, except as otherwise provided in this subpart.

Sec. 51.907 For an area that fails to attain the 8-hour NAAQS by its attainment date, how does EPA interpret sections 172(a)(2)(C)(ii) and 181(a)(5)(B) of the Act?

For purposes of applying sections 172(a)(2)(C) and 181(a)(5) of the Act, an area will meet the requirement of section 172(a)(2)(C)(ii) or 181(a)(5)(B) of the Act pertaining to 1-year extensions of the attainment date if:

- (a) for the first 1-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less.
- (b) for the second 1-year extension, the area's 4th highest daily

8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

Sec. 51.908 What modeling and attainment demonstration requirements apply for purposes of the 8-hour ozone NAAQS?

(a) Are there areas that do not require submission of a modeled attainment demonstration?

No additional modeled attainment demonstration is required for -

- (1) an area classified as marginal for the 8-hour NAAQS in accordance with section 51.903; or
- (2) an area subject to section 51.904 for which EPA has approved an attainment date of 3 years or less under section 51.904(b)(2).

(b) What is the attainment demonstration requirement for an area classified as moderate or higher under section 51.903? An area classified as moderate or higher under section 51.903 shall be subject to the attainment demonstration requirement applicable for that classification under section 182 of the Act, except such demonstration is due no later than 3 years after the effective date of the designation of the area for the 8-hour NAAQS.

(c) What is the attainment demonstration requirement for an area subject to section 51.904? An area subject to section 51.904 for which EPA has not approved an attainment date of 3 years or less under section 51.904(b)(2) must submit an attainment demonstration no later than 3 years after the effective date of the designation of the area for the 8-hour NAAQS.

(d) What criteria must the attainment demonstration meet? An

attainment demonstration due pursuant to paragraph (b) or (c) of this section shall be consistent with Appendix W of this part and EPA's most recent modeling guidance at the time the modeled attainment demonstration is performed. Local, regional and national modeling developed to support Federal or local controls may be used provided the modeling is consistent with EPA's modeling guidance.

(e) What is the required timeframe for obtaining emission reductions to ensure attainment by the attainment date? For each nonattainment area, the State must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season.

(f) Is a mid-course review (MCR) required? For each nonattainment area with an attainment date greater than 6 years after the effective date of the area's designation, a State must complete and submit to EPA a mid-course review midway between the due date for its attainment demonstration SIP and the area's attainment date, consistent with guidance issued by EPA.

Sec. 51.909 Baseline emission inventories for attainment demonstrations and RFP Plans

A baseline emission inventory is required for the attainment demonstration required under section 51.908 and the RFP required under section 51.910. As determined on the effective date of an area's nonattainment designation, the baseline inventory shall be calculated using the most recent calendar year for which a complete inventory is required to be submitted to EPA under the

Consolidated Emissions Reporting Rule in subpart A of this part. For initial designations for the 8-hour NAAQS, the baseline emission inventory shall be based on the calendar year 2002.

Sec. 51.910 What requirements for reasonable further progress (RFP) under sections 172(c)(1) and 182 apply for areas designated nonattainment for the 8-hour ozone NAAQS?

(a) What are the general requirements for RFP for an area classified pursuant to section 51.903? For an area classified pursuant to section 51.903, the RFP requirements specified in section 182 of the Act for that area's classification shall apply.

(1) What is the content and timing of the RFP plan required under section 182(b)(1) of the Act for areas classified as moderate or higher pursuant to section 51.903?

(i) Except as provided in paragraph (a)(1)(ii) of this section, for each area classified as moderate or higher, the state must submit a SIP revision consistent with section 182(b)(1) of the Act no later than 2 years after the effective date of the nonattainment designation for the area. The 6-year period referenced in section 182(b)(1) of the Act shall begin January 1 of the year following the year used for the baseline emission inventory. For areas initially designated nonattainment for the 8-hour NAAQS the six-year period shall run

from January 1, 2003 to December 31, 2008.

(ii) An area classified as moderate or higher that has the same boundaries as an area for which EPA fully approved a 15 percent plan for the 1-hour NAAQS is not subject to section 182(b)(1) of the Act for the 8-hour NAAQS, but instead-

(A) If classified as moderate, is subject to RFP under section 172(c)(2) of the Act and shall meet that obligation by submitting 3 years after the effective date of its designation a SIP revision that provides for implementation of all emission reductions needed for attainment by the beginning of the ozone season in the area's attainment year;

(B) If classified as serious or higher, is subject to RFP under section 182(c)(2)(B) of the Act and shall submit no later than 2 years after the effective date of its designation an RFP SIP providing for an average of 3 percent per year of VOC and/or NO_x emissions reduction for the 6-year period beginning January 1 of the year following the year used for the baseline emission inventory. For areas initially designated nonattainment for the 8-hour NAAQS the 6-year period shall run from January 1, 2003 to December 31, 2008.

(2) Is there an additional RFP obligation under section 182(c)(2)(B) of the Act for areas classified as serious or higher pursuant to section 51.903? For each area classified as serious or higher under section 51.903, the State must submit no later than 3 years after the effective date of the area's nonattainment designation a SIP revision consistent with section 182(c)(2)(B) of the Act for each 3 year period following the initial 6-year period addressed under paragraph (a)(1)(ii)(B) of this section until the area's attainment date. For areas initially designated nonattainment for the 8-hour NAAQS the 3-year periods referenced in section 182(c)(2)(B) of the Act shall begin January 1, 2009.

(3) What is the applicability of section 182(c)(2)(C) of the Act? For purposes of the RFP SIPs due under paragraphs (a)(1)(ii)(B) and (a)(2) of this section, the State may substitute NO_x emission reductions for VOC emission reductions as provided in section 182(c)(2)(C) of the Act.

(4) What restrictions apply on the creditability of emission control measures for the RFP plans required under this section? Except as specifically provided in section 182(b)(1)(C) and (D) and section 182(c)(2)(B) of the Act, all emissions reductions that occur after the baseline emission inventory year are creditable for purposes of the RFP requirements in this section.

(b) What are the general requirements for RFP for an area classified pursuant to section 51.904? For an area classified pursuant to section 51.904, the RFP requirements specified in section 172(c) (2) of the Act shall apply.

(1) Areas with an approved SIP pursuant to section 51.904(b) (2) are deemed to have met the RFP obligation under section 172(c) (2) of the Act.

(2) For each area subject to section 51.904 without an approved SIP pursuant to section 51.904(b) (2), the State shall submit no later than 3 years following the effective date of the nonattainment designation a SIP providing for RFP consistent with section 172(c) (2) of the Act.

(i) For each area with a requested attainment date no later than 6 years after the effective date of the area's designation for the 8-hour NAAQS, the SIP revision shall show that all emissions reductions needed for attainment would be implemented by the beginning of the attainment year ozone season.

(ii) For each area with a requested attainment date more than 6 years after the effective date of the area's designation for the 8-hour NAAQS, the SIP revision shall meet the same progress requirements and is subject to the same limitations applicable to areas classified under section 51.903 as serious or higher. Such requirements and limitations are specified in

paragraphs (a) (1) (ii) (B), (a) (2) and (a) (3) of this section.

(c) What method should a State use to calculate RFP targets?

The State must use the methods consistent with requirements of sections 182(b) (1) (C) and (D) and 182(c) (2) (B) to properly account for the non-creditable reductions when calculating RFP targets for the initial 6-year period and the subsequent 3-year periods.

Sec. 51.911 [Reserved]

Sec. 51.912 What requirements apply for reasonably available control technology (RACT) under the 8-hour NAAQS?

(a) Areas subject to section 51.903.

(1) The State must submit a SIP revision for each area classified under section 51.903 that meets the RACT requirements specified for the area's classification in sections 182(a) (2) (A) and 182(b) (2) of the Act, except as provided in paragraph (a) (2) of this section.

(2) The State shall submit the RACT SIP for each area no later than 2 years after the effective date of the nonattainment designation of the area for the 8-hour NAAQS and shall provide for implementation of RACT as expeditiously as practicable but no later than 30 months after the RACT SIP is due.

(b) Application of RACT provisions in sections 182(b) (2) (C) and 182(f) for areas subject to section 51.903.

(1) For purposes of meeting the RACT obligations under section 182(b) (2) (C) of the Act for major stationary

sources of VOCs and under section 182(f) of the Act for major stationary sources of NO_x, the definition of major stationary source in section 302 of the Act, as modified by the major source definition in either section 182(b), (c), (d) or (e) of the Act as applicable to the area's classification, shall apply. VOC and NO_x are to be considered separately for purposes of determining whether a source is a major stationary source. However, for an 8-hour ozone nonattainment area or any portion thereof that had a higher classification at the time of revocation of the 1-hour standard under the 1-hour standard, the major source definition would be based on that higher classification as provided under section 51.905(a) of this subpart.

(2) Prior RACT Determinations.

(i) Where prior to the effective date of an area's 8-hour NAAQS designation a State has adopted and EPA has approved a control measure as RACT for a specific major stationary source or source category in a nonattainment area for the 1-hour NAAQS, the State is not required to submit an additional RACT determination for that source or source category.

(ii) If a portion of the 8-hour NAAQS nonattainment area was not a part of the 1-hour NAAQS nonattainment in which the RACT obligation applied, the State shall

submit a SIP under paragraph (a) ensuring that RACT controls for each source category covered by a control techniques guideline and each major stationary source apply throughout the 8-hour nonattainment area.

(iii) The exemption in paragraph (b)(i) of this section shall not apply where a State concluded that no additional controls would apply to the major stationary source or source category for purposes of meeting RACT for the 1-hour NAAQS.

(3) For purposes of meeting the NO_x RACT requirement of section 182(f) of the Act in areas located in a State subject to the NO_x SIP Call, RACT SIP requirements are considered met:

(i) for sources subject to the State's emission cap-and-trade program where the cap-and-trade program has been approved by EPA as meeting the NO_x SIP Call requirements; and

(ii) for cement kilns that are subject to a SIP-approved obligation to install and operate controls that are expected to achieve at least a 30 percent reduction from uncontrolled levels.

(4) A State may meet the NO_x RACT requirement by showing that the weighted average emission rate from sources in the nonattainment area subject to RACT-including sources subject to the NO_x SIP Call requirements-meet RACT requirements.

(c) Areas subject to section 51.904. Areas subject to section

51.904 are subject to the RACT requirement specified in section 172(c)(1) of the Act. To meet the requirement in section 172(c)(1) of the Act, the State must submit with its attainment demonstration a SIP revision demonstrating that the area has adopted all control measures necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.

(d) Reasonably Available Control Measures (RACT). For each nonattainment area required to submit an attainment demonstration under section 51.908, the State shall submit with the attainment demonstration a SIP revision demonstrating that it has adopted all control measures necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.

Sec. 51.913 Which areas are subject to the section 182(f) NO_x waiver provisions for the 8-hour NAAQS? The section 182(f) NO_x waiver provisions apply to any area designated nonattainment for the 8-hour ozone NAAQS and to any ozone transport region.

Sec. 51.914 [Reserved] [for NSR proposal]

Sec. 51.915 What emission inventory requirements apply under the 8-hour NAAQS?

For each nonattainment area subject to section 51.903, the emission inventory requirement in section 182(a)(1) of the Act shall apply, and for each nonattainment area subject to section 51.904, the emission inventory requirement in section 172(c)(3) of the Act shall apply.

For purposes of meeting the emissions inventory requirements of the Act, the State shall meet the requirements under the

Consolidated Emissions Reporting Rules, 40 CFR 51 Subpart A.

Sec. 51.916 What are the requirements for an Ozone Transport Region under the 8-hour NAAQS?

(a) In General. Sections 176A and 184 of the Act apply for purposes of the 8-hour NAAQS.

(b) RACT Requirements for Certain Portions of an Ozone Transport Region. The State must submit a SIP revision that meets the RACT requirements of section 184 of the Act for each area designated as attainment or unclassifiable or that may be classified under section 51.904 of this subpart, but which is located in an ozone transport region. A major stationary source for purposes of this section is defined as a source which directly emits, or has the potential to emit, 100 tons per year or more of NO_x or 50 tons per year or more of VOC. The State shall submit the RACT revision no later than 2 years after the effective date of the nonattainment designation of any area in the OTR for the 8-hour NAAQS and shall provide for implementation of RACT as expeditiously as practicable but no later than 30 months after the RACT SIP is due.

40 CFR Part 81-Designation of Areas for Air Quality Planning Purposes

40 CFR 81 is proposed to be amended by adding and reserving a new subpart E to read as follows:

Subpart E [Reserved]

[Will identify area designations and classifications for the 1-hour NAAQS in place at the time the 1-hour NAAQS no longer

applies to each area; this is being done to implement the proposed rule on anti-backsliding.]